Supreme Court, U.S.
FILED
JUL 19 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-1982

In The

Supreme Court of the United States

October Term, 1990

JOHN MONROE, ET AL.,

Petitioners,

v.

CITY OF WOODVILLE MISSISSIPPI, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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July 19, 1990

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QUESTION PRESENTED

Can the District Court's findings that Woodville's Black citizens are not politically cohesive be held clearly erroneous, particularly where there is a significant degree of cross-over voting for White candidates by the Black citizenry which constitutes a majority of the voting age population of the town.

PARTIES TO THE PROCEEDINGS BELOW

The parties to the proceedings below were the Appellants John Monroe, Dora Monroe, Jimmy Harris and Larry Johnson, individually in view of the fact the District Court concluded that the Plaintiffs failed to make out a class action under Rule 23 of the Federal Rules of Civil Procedure, and the Respondents City of Woodville, Mississippi, Ron Senko, Mayor of Woodville, Mississippi, George J. Gonda, former Mayor of Woodville, Mississippi, Andy J. Lewis, former Alderman; Frances Townsend, City Clerk, Gary D'Quilla, Charles James, Tim Sessions, Elnora Veals, current Aldermen; Joe Townsend, Mary Magee, and Herbert Curry, former Election Commissioners and Jessie Stewart, Dewey Bailey and Gail Sessions, current Election Commissioners.

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OTHER AUTHORITIES:

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OPINIONS BELOW

Monroe v. City of Woodville, Miss., et al., 897 F.2d 763 (5th Cir. 1990); *Monroe v. City of Woodville, Miss., et al.*, 881 F.2d 1327 (5th Cir. 1989); *Monroe v. City of Woodville, Miss., et al.*, 688 F.Supp. 255 (S.D.Miss. 1988); *Monroe v. City of Woodville, Miss., et al.*, 819 F.2d 507 (5th Cir. 1987); and *Monroe v. City of Woodville, Miss., et al.*, 636 F.Supp. 423 (S.D.Miss. 1986).

JURISDICTION

The United States Court of Appeals for the Fifth Circuit entered Judgment on this appeal on August 30, 1989. Subsequently, Petitioners filed a Petition for Rehearing En Banc before the Fifth Circuit. On March 22, 1990, the Fifth Circuit considered Appellants' Petition as a Motion for Rehearing and granted it in part, and denied it in part, and denied the Petition for Rehearing En Banc.

STATUTES INVOLVED

This case involves Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. Section 1973.

STATEMENT OF THE CASE

The City of Woodville, Mississippi, is one square mile in size and has a population of 1,512 residents. Of this population, 972 residents are Black (64.3%), and 540 are White (35.7%). With respect to voting age population of

age eighteen (18) or over, there are 632 Blacks (60.5%) and 412 Whites (39.5%). Two of the four aldermen are now Black.

The District Court made findings of fact, relied upon by the Fifth Circuit, as follows, namely: that there was no candidate slating process in Woodville; that overt or subtle racial appeals were absent in political campaigns within the city; that Woodville's small size resulted in a multi-member district which was not unusually large so as to hinder the opportunity of Blacks to elect representatives of their choice; that the anti-single shot provision had been repealed; that Black residents constituted a majority of Woodville's voting age population; that Blacks crossed over to vote for White candidates to a large degree; that Blacks served in many public offices in the surrounding Wilkinson County; that the Plaintiffs had failed to prove political cohesion among Black residents, and that, thereby the Plaintiffs failed to prove legally significant White block voting. The District Court also noted that Woodville's Black community is very active politically, setting forth for example, that in the May, 1985 Democratic Primary, eighty-six per cent of the registered voters voted.

The District Court also specifically found that there was no lack of responsiveness on the part of elected officials in Woodville, Mississippi, to the particularized needs of the Black community. Woodville has employed Blacks, including a Black in a managerial position as Superintendent of Utilities, Blacks as four of its five police officers, and a Black as one of its two Deputy City Clerks. Garbage collection, utilities and police services are provided equally. The District Court specifically

rejected the argument that roads were not equal upon a finding that the proof showed that the City had no control over the width of the streets in one Black area because only a very narrow street right-of-way had been provided when the houses were originally built. There was found to be no complaint that the roads throughout the town were maintained differently in Black and White areas, and all streets within the town in both the Black and White neighborhoods were paved. Thus it was the holding of the District Court, affirmed by the Fifth Circuit, that the Petitioners had not borne their burden of proof.

The expert witness for Petitioners, Dr. Ronald Love, formulated as a basic premise that the City of Woodville and the surrounding Wilkinson County shared similar demographic features and therefore the analysis of Wilkinson County voting tendencies applied to the City of Woodville itself. Black candidates have enjoyed considerable success in obtaining election to county offices in Wilkinson County. By this reasoning, the demographic evidence supports a finding that the Black majority population of Woodville is not materially hindered by the multi-member city elections so that it cannot participate effectively in the political process. Dr. Love specifically testified that Wilkinson County provides equal access to the political process for Blacks, based upon the success of Black candidates there.

The Fifth Circuit held that these findings by the District Court were not clearly erroneous. Rather, Plaintiffs/Petitioners' data from the 1987 elections weigh against a finding of political cohesiveness. There was

active disagreement between expert witnesses as to political cohesiveness and testimony from Black residents of Woodville also differed on this point. Specifically, two Black witnesses credited by the District Court testified that in their view, the Black residents of Woodville were not politically cohesive. By contrast, again, a number of Blacks have held public office in the surrounding Wilkinson County in recent years and two of the four aldermen are now Black. These facts, taken in view of a totality of circumstances, including the fact of the numerical majority of Black voters in the city of Woodville, Mississippi, establish that the findings of the District Court are not clearly erroneous and are properly upheld.

ARGUMENT

REASONS FOR DENYING THE WRIT

1. This Case Applies Settled Law.

42 U.S.C. Section 1973 provides that a violation of voting rights must be established as a matter of fact based on the totality of the circumstances, and that nothing in the law establishes a right to have members of a protected class elected in numbers equal to their proportion in the population. Congress has instructed courts in adjudicating Section 2 claims to conduct a "searching and practical evaluation" of "past and present reality" to determine whether participation in the political process is "equally open" to all persons. *See, Thornburg v. Gingles*, 478 U.S. 30, 106 S.Ct. 2752, 2763-64 (1986) (quoting from S.Rep. no. 417). As guidance for this broad inquiry, Congress directed attention back to the Fifth Circuit's criteria

in *Zimmer v. McKeithen*, 485 F.2d 1297 (5th Cir. 1973) (*en banc*), *aff'd, sub nom. East Carroll Parrish School Board v. Marshall*, 424 U.S. 636 (1976) (*per curiam*), which identified a number of factors generally relevant to a fact-bound, intensely local appraisal of the challenged electoral system. The Supreme Court, in *Thornburg v. Gingles*, acknowledged the totality of the circumstances approach and introduced an additional, threshold analysis to be used in challenges to at-large election systems. Under these criteria, all Circuits have uniformly cautioned their District Courts to undertake "fact specific assessments" of the relevance and probative value of election results, *e.g., West Wego Citizens for Better Government v. West Wego*, 872 F.2d 1201, 1208 n.8 (5th Cir. 1989) (specifically in regard to assessing exogenous election results).

These standards of law have been faithfully applied in the instant case.

2. There Is No Split Among The Circuits

Thornburg v. Gingles, supra, and the so-called "Zimmer" factors (*Zimmer v. McKeithen, supra,*) as set forth in the legislative history to Section 2 of the Voting Rights Act remain the law applicable to the Voting Rights Act in analysis of violations of Section 2. These standards have been applied by all circuits in making the locally fact specific findings necessary in such cases. Annotation: *"At-Large" Elections as Violation of Section 2 of Voting Rights Act of 1965* (42 U.S.C. Section 1973), 92 A.L.R. Fed. 824 (1989). There is no significant divergence requiring further definition from this Court.

CONCLUSION

This case was correctly decided under application of existing law under the clearly erroneous standard. There is no significant issue requiring review by this Court.

Respectfully submitted,

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